



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND REGION
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GE-PITTSFIELD/HOUSATONIC RIVER CONSENT DECREE
COMMERCIAL AND RECREATIONAL PROPERTY CLEANUPS
May 2002 Fact Sheet

In October 2000, the federal court in Springfield approved the settlement, or Consent Decree, covering the cleanup of properties at the GE-Pittsfield/Housatonic River Site. In addition to the cleanup of the River itself, the settlement addresses the cleanup of a number of privately owned commercial and recreational (including undeveloped) properties located in Pittsfield, including properties located in former oxbows of the Housatonic River, in certain other areas adjacent to the GE facility, and in the floodplain of the river between the Lyman Street bridge and the confluence of the East and West Branches of the river. EPA is working hard to ensure that the cleanup at these properties occurs as promptly as possible under the Consent Decree. To assist property owners, EPA is providing this Fact Sheet to answer questions that property owners may have regarding the upcoming sampling and cleanup activities.

Who Can I Call?

We recognize that there will be a period of time prior to when investigations and cleanup of the properties have been completed. If you have any questions about possible uses of your property, do not hesitate to call EPA. Bryan Olson, the leader of EPA's team addressing the GE-Pittsfield/Housatonic River Site, is available to answer any questions you have about the cleanup process and use of your property. Bryan can be reached at 617-918-1365.

What Does The Cleanup Include?

As you probably know, excavation of contaminated sediments and bank soils from the River has been underway since October 1999. GE, under EPA oversight, is performing the cleanup of the Upper ½ Mile Reach of the River, which runs from the Newell Street bridge to the Lyman Street bridge. Following completion of that work, scheduled for later in 2002, EPA will begin excavating contaminated sediments and bank soils from the next 1 ½ Mile Reach of the River, which runs from the Lyman Street bridge to the confluence of the East and West Branches of the River.

In addition to the River cleanup, the Consent Decree and the Statement of Work attached to the Decree include considerable detail regarding the specifics of the cleanup of other properties at the Site, including the non-GE-owned commercial and other non-residential properties in the former oxbow areas, the floodplain, and other areas adjacent to the GE facility (located within areas known as the Unkamet Brook Area and East Street Area 1-North). For current commercial and other non-residential properties, the cleanups include measures that not only ensure that present uses

are protective of human health and the environment, but also ensure that any future change in use to a legally permissible use will be protective as well. Examples of a change in use include a future change from commercial use to residential or recreational use, or a future expansion of the current use such as an addition to, or renovation of, existing structures.

Generally speaking, to ensure the protectiveness of the **current use**, the cleanups of these commercial and recreational properties under the Consent Decree will include the following types of actions: (1) the excavation and/or capping of contaminated soil; and (2) for the properties in the former oxbow areas and other areas near the GE facility, other actions to ensure that the groundwater does not adversely impact the river or human health.

(1) The *soil excavation/capping* will reduce risks of people being exposed to PCBs or other contaminants. For **commercial properties**, GE will be required to (a) remediate the top foot of contaminated soil (or the top three feet if the property owner chooses the "Conditional Solution" discussed below) if the average PCB concentration exceeds 25 parts per million (ppm), and (b) excavate soil between 1 and 6 feet deep to achieve an average PCB concentration of 200 ppm. For **recreational or other undeveloped properties** (considered to be in recreational use), GE will be required to excavate contaminated soil to achieve average PCB concentrations of 10 ppm in the top foot and 15 ppm in the next two feet (or, if the property owner chooses the "Conditional Solution," 10 ppm in both the top foot and top three feet). In addition, at both types of properties, if the PCBs that would remain after the above activities exceed an average PCB concentration of 100 ppm in the top 15 feet of soil, GE is required to install a permanent barrier to isolate and contain the soils beneath the surface. Upon completion, these cleanups will protect the current uses of the properties from unacceptable contaminant exposure risks.

(2) The *groundwater* underneath the former oxbows of the river and other areas near the GE facility is being addressed under a separate timetable from the soil cleanups. Under the Consent Decree, these areas are included within a number of "Groundwater Management Areas" (GMAs). For each of these GMAs, GE is required to carry out groundwater monitoring programs under a series of plans and reports, subject to EPA approval. By spring 2002, GE will have commenced the initial groundwater monitoring programs at all these GMAs. GE is also required to achieve certain groundwater standards to ensure that groundwater entering the River is sufficiently clean to protect human health and the environment.

In addition, the Consent Decree gives property owners two options to further ensure that **future uses** of the property will be protective: (1) owners may accept placement of restrictions, known as Environmental Restrictions and Easements, or EREs, on the future use of their property in exchange for payment by GE, as spelled out in the Consent Decree; or (2) owners may choose a "Conditional Solution." The Conditional Solution requires GE to perform additional cleanup if the property owner seeks to change their use of the property to another use permitted by law, or even to expand on their current use (e.g. build a new building) as permitted by law. Under either choice by the property owner, the future use of the property will be protective. (For additional information on EREs and Conditional Solutions, please see the explanation in Attachment A.)

What Is The Cleanup Timetable?

The non-residential properties located in the former oxbow areas of the river, in the floodplain between the Lyman Street bridge and the confluence of the East and West Branches, in the Unkamet Brook Area, or in East Street Area 1-North are divided into various Removal Action Areas (RAAs) for purposes of the soil cleanups. For each of these RAAs, GE is required by the Consent Decree to submit a series of work plans and reports, as summarized below, and upon EPA approval, to carry out the specified work. The schedule for the initial work plan for each RAA is set forth in Attachment B to this Fact Sheet.

- The first submittal for each RAA is a work plan for a Pre-Design Investigation, which is essentially the set of field sampling to be performed on the properties. The sampling is used to assess the need for and extent of soil cleanup necessary on those properties. (Some of these work plans have already been submitted, as identified in Attachment B.)
- Following EPA approval of that work plan, GE must perform the Pre-Design Investigation and submit to EPA a report with the results of the investigations. For each RAA, EPA will establish the date for submittal of the Pre-Design Investigation Report in its approval of the Pre-Design Investigation Work Plan.
- Following EPA approval of the Pre-Design Investigation Report, GE must submit a conceptual work plan for the design and implementation of the Removal Action (i.e. cleanup) for the area. A conceptual work plan is essentially a plan outlining what areas will require cleanup based on the sample results. After EPA approves the conceptual work plan, GE must submit a more detailed work plan for the cleanup, which will include the specific plans and schedules for implementation of the cleanup.

- Following EPA approval of that work plan, GE must implement the activities in the work plan according to a schedule approved by EPA. GE must continue to implement the cleanup, including any applicable long-term maintenance activities, until the Performance Standards specified in the Consent Decree are achieved for that cleanup. Performance Standards, generally, are the required cleanup levels, the standards for cleanup design, and other requirements GE must follow in performing a cleanup.

- Also, GE is required to initiate discussions with property owners regarding use of EREs on their properties. GE is required to use its "best efforts" (as discussed in Attachment A to this Fact Sheet) to reach agreement with property owners regarding placement of an ERE on their property; however, the final choice of whether to place an ERE on the property is the owner's. To provide property owners with an adequate opportunity to review sampling results provided in the Pre-Design Investigation Report, EPA intends to specify a time following submission of the Pre-Design Investigation Report for each RAA for GE to notify EPA regarding which landowners will agree to EREs. The actual EREs would not be signed and submitted to EPA until after EPA has approved GE's conceptual design work plan.

Will I Get Notice of Proposed Sampling and Cleanup Activities?

Yes. Prior to performing any investigations or cleanup work on a property, GE is required under the Consent Decree to use its best efforts to obtain an agreement for access to the property from the owner. Except where EPA approves otherwise, the access agreement is to be substantially in the form provided in Appendix R to the Consent Decree (Appendix R, as with the other components of the Consent Decree, can be found on the EPA website at www.epa.gov.region01/ge/). In addition, GE will provide the property owners with copies of all work plans and reports relating to the sampling and cleanup of their properties.

What Role Can I Play in the Cleanup Process on My Property?

As you may know, EPA has had a number of discussions with affected property owners with respect to the upcoming 1 ½ Mile Reach River cleanup. For the commercial and recreational properties addressed by this Fact Sheet, EPA will provide property owners a reasonable period of time to comment on the major documents and plans relating to the soil cleanup of their properties. Please do not hesitate to call EPA if you have questions on any cleanup activity.

How Will I Know My Property Is Clean?

EPA would like to discuss with property owners their ideas on how EPA can best notify property owners of cleanup completion. In

addition, after GE has completed all the activities it believes are required for the cleanups at a given RAA, GE will submit a report requesting that EPA certify completion of the Removal Action. EPA will review that report and, after consulting with the State, will notify GE whether EPA believes the cleanup is complete. If EPA certifies completion of the cleanup, EPA will send GE written notice of that certification.

Following completion of the cleanup, GE is required to undertake site control activities, such as inspection, maintenance and repair of any permanent barriers, and operating groundwater treatment systems.

Will My Property Be Restored After the Cleanup Is Complete?

The work plans for property cleanups will include provisions for property restoration. Generally, restoration of areas affected by the cleanups will, at a minimum, include restoring such areas to existing conditions, to the extent practicable.

This Fact Sheet and Attachments are designed for informing citizens generally of the GE-Pittsfield/Housatonic River Site cleanup process, and are not intended to alter any Consent Decree term or obligation. For the precise Consent Decree requirements, please consult the Consent Decree (www.epa.gov/region01/ge).

Attachment A to Commercial and Recreational Property Cleanups
Fact Sheet

**What is an ERE? What is a "Conditional Solution"? What are
"Best Efforts"? What are the options for property owners?**

The following description is to provide more detail to property owners about the Environmental Restrictions and Easements ("EREs") and Conditional Solutions, which are components of the cleanup of non-residential properties at the Site.

The Consent Decree gives the non-residential property owners two cleanup options -- both of which are protective of human health and the environment. If a property owner elects to place an Environmental Restriction and Easement, known as an ERE, on the property, the property will be cleaned to the following standards:

- (a) for **commercial properties**, an average PCB concentration of 25 ppm or below in the first foot of soil (to be achieved by soil removal in unpaved areas and either soil removal or pavement enhancement in paved areas) and an average PCB concentration of 200 ppm or below in the 1-6 foot depth, plus installation of a permanent barrier if PCBs in the remaining soils exceed 100 ppm in the upper 15 feet; or
- (b) for **recreational (including undeveloped) properties**, an average PCB concentration of 10 ppm in the top foot and 15 ppm in the next two feet, plus installation of a permanent barrier if PCBs in the remaining soils exceed 100 ppm in the upper 15 feet.

If a landowner consents to the ERE, the ERE will allow the existing non-residential use to continue, but will place certain restrictions on the property; for example, a non-residential property cannot be converted to residential or daycare use (or, for a commercial property, to recreational use), and some digging is prohibited, unless additional assessment and/or other response actions are performed. This approach is to ensure that the remediation is protective both for the current and future uses of the property.

Under the Consent Decree, GE is required to make "best efforts" to obtain EREs from non-residential property owners at the Site. The Consent Decree defines "best efforts" as a GE offer to the landowner to pay all transaction costs associated with obtaining and recording the ERE, including appraisal costs, but excluding the owner's attorney's fees prior to executing an ERE, plus either of the following two values, at GE's option:

- (i) the value of the ERE as determined by appraisal, according to a procedure and formula established by the Consent Decree; or
- (ii) 18% of the most recent assessed value of the property according to the City of Pittsfield Tax Assessor's Office (plus 18% of the value of any prior abatement awarded by such Tax Assessor's Office based upon property-specific contamination).

A landowner is not required to agree to impose an ERE on his or her property.

In considering whether to agree to an ERE, a landowner may wish to consult with his or her financial institution and/or mortgage holder to discuss the long-term implications of an ERE. In addition, if a landowner agrees to an ERE, it will be necessary to obtain written agreements from the holders of any mortgages, easements, or other encumbrances on the property, in which those interest holders agree to subordinate their interests to the ERE. These agreements are called "subordination agreements." If the landowner agrees to an ERE, GE is required to approach such interest holders to see if they will agree to sign subordination agreements.

If a landowner does not agree to an ERE (or if the necessary subordination agreements cannot be obtained), a Conditional Solution will be implemented. A Conditional Solution involves a cleanup that is protective of the current use of the property without an ERE. For example, for a property in commercial use, the Conditional Solution involves a cleanup to commercial standards similar to those described above for the ERE approach, except that the property must be cleaned to an average PCB concentration of 25 ppm or less in the first three feet of soil and not just the first foot. Similarly, for a property considered to be in recreational use, the Conditional Solution involves a cleanup to recreational standards similar to those described above for the ERE approach, except that the property must be cleaned to an average PCB concentration of 10 ppm or less in both the top foot and top three feet (instead of 10 ppm in the top foot and 15 ppm in the next two feet). Like the ERE cleanup, the Conditional Solution approach is fully protective for existing uses. However, unlike the ERE approach, the owner will not receive compensation under the Conditional Solution approach.

As to changes in future uses or development, GE, under the Conditional Solution approach, is required to perform additional cleanup - beyond the cleanup described above - "to be protective of any legally permissible future use." Examples of changes to a "legally permissible future use" may include a change to residential use or, for a current commercial property, to recreational use, or an expansion or renovation of existing buildings. There are two requirements for future additional cleanup work by GE. The property owner must:

- (i) submit a plan to and receive the approval of the appropriate governmental authorities (such as a planning board or conservation commission) to authorize the future use, if such plan or approval is required, and
- (ii) provide to the EPA and GE documented evidence of a commitment to such use (examples include evidence of financing or other financial assurance for the project, other plans for implementing the project (such as architectural plans, contracts for performance of the project, or other similar plans), or an affidavit that the owner intends to go forward with the project

or other change in use if the necessary response actions are taken).

Within thirty days of EPA's determination that the property owner has satisfied these two criteria, subject to GE's dispute resolution rights under the Decree, GE must submit a work plan for the additional response actions and then must perform additional response actions as EPA requires to make the property protective of the new use.

GE's obligation to perform additional response actions for future uses will allow a non-residential property owner to conduct facility/property modifications and expansions, with GE bearing the cleanup costs necessary to accommodate such changes (provided the above criteria are met). For example, if a commercial property owner needs to expand, and in doing so is required to place a foundation below three feet, GE will be required to manage and dispose of any contaminated soil at its cost. Additionally, if a landowner wants to convert to residential use or from commercial to recreational use and can legally do so, GE will undertake any cleanup necessary to accommodate such change in use.

This obligation of GE is an enforceable part of the Consent Decree. GE will be subject to stipulated penalties and any other enforcement options available to the governments if GE fails to fulfill its Conditional Solution obligations. A property owner does not have to negotiate with GE to use this option. To trigger GE's additional work obligations, the property owner has to satisfy EPA that the two criteria mentioned above are met.

Attachment B to Commercial and Recreational Property Cleanups
Fact Sheet

Submittal Schedule for Pre-Design Investigation Work Plans

<u>Removal Action Area</u>	<u>Pre-Design Investigation Work Plan Deadline</u>
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Newell Street Area II	Submitted October 26, 2001
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Floodplain Current Non-Residential Properties Located Adjacent to the 1 ½ Mile Reach (Excluding Banks)	Submitted January 31, 2002
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Lyman Street Area	Submitted March 26, 2002
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East Street Area 1 - North	May 27, 2002
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Former Oxbow Areas J and K	June 27, 2002
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Former Oxbow Areas A and C	September 27, 2002
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Unkamet Brook Area	November 27, 2002
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(This schedule excludes the Newell Street commercial area, known as Newell Street Area I, for which the Pre-Design Investigation has already been completed, a Pre-Design Investigation Report has been submitted, and GE submitted a conceptual design plan for the cleanup on January 16, 2002.)